TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 265.

THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY, PLAINTIFF IN ERROR,

vs.

ALMIRA R. CLARE AS ADMINISTRATRIX OF CHARLES C. CLARE, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED AUGUST 5, 1885.

within made, with all things touching the same, we certify, under the seal of our said court, to the Supreme Court of the United States within mentioned, at the day and place within contained in a certain schedule to this writ annexed, as within we are commanded.

By the court:

L. S. B. SAWYER, *Clerk.*

134 UNITED STATES OF AMERICA, *ss:*

To the Central Pacific Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, on the 11th day of October, A. D. 1886, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of the ninth judicial circuit in and for the district of California, wherein the People of the State of California are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Lorenzo Sawyer, judge of the circuit court of the United States for the district of California, this 28th day of July, A. D. 1886, and of the Independence of the United States the one hundred and eleventh.

LORENZO SAWYER,
U. S. Circuit Judge for the District of California.

135 [Endorsed:] No. 4014. In the Supreme Court of the United States. The People of the State of California, pl'ffs in error, *vs.* The Central Pacific Railroad Company, def't in error. Citation. Service of a copy of the within citation is hereby acknowledged this 23 day of Aug. 1886. H. S. Brown, att'y for def't in error. Filed September 2d, 1886. L. S. B, Sawyer, clerk.

Endorsed on cover: [Stamped:] Supreme Court U. S. Received Sep. 28, 1886, clerk's office. California C. C. U. S.. No. 1039. The People of the State of California, plaintiffs in error, *vs.* The Central Pacific Railroad Company. Filed September 28, 1886.

27-45

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between Almira R. Clare, as administratrix of the estate of Charles C. Clare, deceased, as plaintiff, and the Providence and Stonington Steamship Company, as defendant, a manifest error hath happened, to the great damage of the said defendant, as is said and as appears by its complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 13th day of July, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and tenth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

Allowed July 11, 1885.
WM. J. WARREN.

2 [Endorsed:] Due and timely service of a copy of the within writ of error is hereby admitted. Dated N. Y., 13 July, 1885. Isaac N. Miller, att'y for pl'ff Clare.

[Stamped:] U. S. circuit court. Jul. 13, 1885. Timothy Griffith, clerk. Pd. 1.45.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from three to

one hundred and fourteen, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The Providence and Stonington Steamship Company, plaintiff in error, against Almira R. Clare, as administratrix of the estate of Charles C. Clare, deceased, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-fourth day of July, in the year of our Lord one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and tenth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

3 *Summons.*

Supreme Court, City & County of New York.

ALMIRA R. CLARE, as Administratrix of the Estate of Charles C. Clare, Deceased, Plaintiff,

against

THE PROVIDENCE & STONINGTON STEAMSHIP COMPANY, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, April 28, 1881.

ISAAC N. MILLER,
Plaintiff's Attorney.

Post-office address, 293 Broadway, N. Y.; office, No. 293 Broadway, New York.

4 Supreme Court, City and County of New York.

ALMIRA R. CLARE, as Administratrix of the Estate of Charles C. Clare, Deceased,

ag'st

THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY.

The plaintiff herein, complaining of the defendants in the above-entitled action, by Isaac N. Miller, her attorney, respectfully shows to this court:

That, as plaintiff is informed and believes, the defendants are a corporation created under the laws of the State of Rhode Island, having an office for the transaction of business in the city and State of New York, and at the time hereinafter mentioned, being such

corporation, were common carriers of passengers for hire, and were the owners and possessors and were in the use and occupation of two certain steamboats named, respectively, the Narragansett and Stonington, and then and before that time were running the same
5 from and between Stonington, Connecticut, and New York city, and had the control and management thereof through their agents and servants.

That on or about the 11th day of June, 1880, said defendants received one Charles C. Clare on their said boat, the Narragansett, for the purpose of conveying him therein as a passenger from New York city to Stonington aforesaid, for a reasonable compensation, paid to them by said Charles C. Clare; that the said steamboat, under the management and direction of the said defendants and their servants, having said Charles C. Clare on board thereof as a passenger, and proceeding through the waters of Long Island Sound, met the aforesaid steamboat Stonington proceeding on her way to New York city, and that the said steamboats were so negligently, unskilfully, and carelessly managed, conducted, and navigated on the part of the defendants, by their servants, that by and through the
6 mere negligence, mismanagement, carelessness, and default of the said defendants and their servants the said steamboat came in violent and forcible collision, whereby the said steamboat, the Narragansett, was so damaged, injured, broken, and crushed that fire immediately broke out thereon, and within a few moments thereafter said steamboat sank and the said Charles C. Clare, without any neglect or *neglect or* default on his part, was drowned.

And this plaintiff further shows, upon information and belief, that, through the negligence and carelessness of the defendants, the said steamboat Narragansett left New York on the afternoon of June 11th aforesaid, without being in charge of a chief engineer and without having a complement of watchmen; that by reason *that by reason* of the negligence and carelessness of the said defendants, through their servants, improper signals were given, and the
7 said steamers negligently and carelessly steered and guided, by reason whereof, wholly or in part, said collision occurred; that with a reasonable and proper look out, care, and attention on the part of defendants and their servants such collision might have been avoided and the death of said Charles C. Clare, thereby cause-prevented.

And this plaintiff further — that she is unable to determine the exact location in Long Island Sound where said collision occurred, but alleges that said collision occurred either within the State of New York or the State of Connecticut.

That section 9, chapter 6, title 19 of the Laws of 1875 of the State of Connecticut provides that all actions for injury to the person, whether the same do or do not instantaneously or otherwise, result in death, to the reputation or to the property, and actions to recover damages for injury to the person of the wife, child, or servant of any person shall survive to his executor or administrator, provided
8 the cause of action shall not have arisen more than one year before the death of the deceased, but all damages resulting in

death recovered in an action brought by any executor or administrator shall inure to the benefit of the husband or widow and heirs of the deceased person after deducting the costs and expenses of suit as follows: Half to the husband or widow and half to the lineal descendants of the deceased *per stirpes*, but if there be no descendants the whole shall go to the husband or widow, and if there be no husband or widow to the heirs, according to the law regulating the distribution of intestate personal estate.

That section 1, chapter 78, of the laws of 1877 of the State of Connecticut provide that in all actions by an executor or administrator for injuries resulting in death from negligence such executor or administrator may recover from the party legally in fault
9 for such injuries just damages, not exceeding five thousand dollars, to be distributed as provided in section 9, chapter 6, title 19, laws of 1875, but such action must be brought within one year of the neglect complained of; and this plaintiff further shows that said collision, from which the death of said Charles C. Clare resulted, occurred less than one year before the commencement of this action, namely, on or about the night of the 11th of June, 1880.

That the said Charles C. Clare so killed died intestate, and that on the 28th day of April, 1881, letters of administration on his goods, chattels, and credits, dated on that day, were duly granted to the plaintiff by the surrogate of the county of New York, whereby she was duly appointed administratrix as aforesaid, and that thereupon she duly qualified and entered upon the duties of her said office.

10 That said Charles C. Clare left surviving him the plaintiff, who is the widow of the deceased, and four children, heirs-at-law and next of kin, all of whom are minors, namely, Grace, Charles, Myra, and Howard, and reside with this plaintiff.

That said widow was dependant upon deceased for subsistence & support and said next of kin were dependant upon deceased for subsistence and support, nurture and education, and have sustained pecuniary and other injury by his death, to their damage five thousand dollars.

Wherefore plaintiff, as administratrix as aforesaid, demands judgment against the defendants for the sum of five thousand dollars damages, according to the statute in such case made and provided, and interest on said sum from the 11th day of June, 1880, together with the costs of this action.

ISAAC N. MILLER,
Pl'ff's Att'y, 293 Broadway, N. Y.

11 City & County of New York, *ss:*

Almira R. Clare, being duly sworn, says that she is the plaintiff in the above-entitled action; that the foregoing complaint is true of her own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters she believes it to be true.

ALMIRA R. CLARE.

Sworn to before me this 28th day of April, 1881.
JAMES J. TRAYNOR,
Notary Public, N. Y. Co.

Endorsed: Copy complaint.

12 *Notice of Appearance and Demand*

Supreme Court.

ALMIRA R. CLARE, Adm'x, &c.,
against
THE PROVIDENCE & STONINGTON STEAMSHIP COMPANY.

Please to take notice I am retained by and appear for The Providence and Stonington Steamship Company, the defendant in this action, and demand that all papers in this action be served on me at my office, No. 50 Wall street, New York city.

Yours, &c.,
W. S. DIXON,
Attorney for Defendant.

Dated ——— —, 18—.
Office address, ——.
Post-office address, 50 Wall street, N. Y. city.
To Isaac N. Miller, attorney for plaintiff.

13 *Petition*

Supreme Court.

ALMIRA R. CLARE, as Administratrix of the Estate of Charles C. Clare, Deceased, Plaintiff,
against
THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY, Defendant.

To the supreme court:

The petition of the Providence and Stonington Steamship Company respectfully shows—

That your petitioner is the defendant in this suit, and that the same was brought by Almira R. Clare, administratrix of Charles C. Clare, as plaintiff, on or about the 29th day of April, 1880, in the supreme court, county of New York, and that at the time of bringing this suit the said plaintiff was and now is a citizen of the State of New Jersey, and that your petitioner was not at the time of
14 bringing this suit and is not now a citizen of the State of New York, and was and now is a citizen and resident of the State of Rhode Island.

And your petitioner further respectfully shows that at the time when this suit was brought there was and now is a controversy therein between a citizen of a State and a citizen of another State, to wit, the said plaintiff, residing in the State of New Jersey, and the said Providence and Stonington Steamship Company, being a corporation or company organized and existing under and by virtue of the laws of the State of Rhode Island, and further that the said

plaintiff claims in the summons and complaint in this suit, as damages against your petitioner, the sum of $5,000, and that the matter in dispute exceeds the sum of $5,000, inclusive of costs.

That this cause has not been tried, but is now at issue, and that the October term, 1880, is the term of this court at which this said suit could be first tried.

15 That your petitioner desires to remove this suit before trial thereof into the next circuit court of the United States for the southern district of New York, where said suit is pending, in the second circuit, in pursuance of the Revised Statutes of the United States and of the act of Congress entitled "An act to determine the jurisdiction of certain courts of the United States and to regulate the removal of causes from said courts, and for other purposes," approved on March 3rd, 1875, and that your petitioner is ready and willing to make and file herewith a bond, with good and sufficient surety, for its entering in such circuit court, on the first day of its session next after the filing of this petition and after the order of this court removing said suit to the said circuit court, the copy of the record in such suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that said suit was

16 wrongfully or improperly removed thereto, and for doing all other acts and things required to be done by the Revised Statutes of the United States and the said act of Congress in such case made and provided, and it offers herewith its bond, executed by Samuel D. Babcock, of the city of New York, and by Henry Morgan, of the city of New York, as sureties, in the penal sum of $500.00, conditioned that your petitioner shall enter in such circuit court, on the first day of its session next after the filing of this petition and after the order removing said cause to the said circuit court, a copy of the record in such suit, and for paying all costs that may be awarded by said circuit court if said court shall hold that said cause was wrongfully or improperly removed thereto, and for doing such other appropriate acts as by the Revised Statutes of the United States and by the said act of Congress in such case made and provided are required to be done.

17 And your petitioner therefore prays that the said bond be accepted as good and sufficient sureties, according to said provisions of law, and that said suit may be removed into the United States circuit court to be held in the southern district of New York, in the second circuit, pursuant to the statute made and provided, and that no further proceedings may be had therein in this court.

Dated June 7th, 1881.

AM. P. DIXON,
Attorney for Defendant.

STATE OF NEW YORK, }
City and County of New York, } ss:

Courtland G. Babcock, being duly sworn, deposes and says that he is the treasurer of the petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true, except as to the matters therein stated to be alleged on in-

formation and belief, and as to those matters he believes the same to be true.

C. G. BABCOCK, *Treas.*

18 Subscribed and sworn to before me this 7th day of June, 1881.

JAMES C. GERARD,
Notary Public, N. Y. Co.

State of New York — Court.

ALMIRA R. CLARE, as Administratrix of the Estate of Charles C. Clare, Deceased, Plaintiff,

against

THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY, Defendant.

We, The Providence and Stonington Steamship Company, above named, as principal, and Samuel D. Babcock, of the city of New York, and Henry Morgan, of the city of New York, sureties, are held and firmly bound, jointly and severally, unto Almira R. Clare, as administratrix of the estate of Charles C. Clare, deceased, plain-
19 tiff above named, in the sum of $500.00, lawful money of the United States of America, to be paid to the said plaintiff or to her heirs, executors, administrators, successors, or assigns; for which payment, well and truly to be made, we hereby bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated the 7th day of April, 1881.

Whereas the suit was brought on or about the 29th day of April, 1881, in the supreme court of New York by the said Almira R. Clare, administratrix of the estate of Charles C. Clare, deceased, against the said Providence and Stonington Steamship Company, and that the cause is now pending for trial in said supreme court, and is removable into the circuit court of the United States under the act of Congress entitled "An act to determine the jurisdiction of circuit courts of the United States and to regulate the removal of causes from said courts, and for other purposes," approved
20 March 3d, 1875; and whereas the said Providence and Stonington Steamship Company has filed its petition in the said supreme court for the removal of the said suit into the next circuit court of the United States to be held in the southern district of New York, pursuant to the said statute of the United States in such case made and provided:

Now, therefore, the condition of this obligation is such that if the Providence and Stonington Steamship Company, or its successors, shall enter or cause to be entered in the circuit court of the United States for the southern district of New York, on the first day of its session next ensuing after the filing of the said petition and of the order of the said supreme court for the removal of said suit into the circuit court, a copy of the record in such suit, and shall pay all costs that may be awarded by the said circuit court if the said court

21 shall hold that such suit was wrongfully or improperly removed thereto, or cause to be done such other appropriate acts as by the Revised Statutes of the United States and the said act of Congress are required to be done upon the removal of a suit into the United States circuit court, then the above obligation to be void; otherwise to remain in full force and effect.

PROVIDENCE & STONINGTON STEAMSHIP CO.,
By C. C. BABCOCK, *Treasurer.* [L. S.]
SAMUEL D. BABCOCK. [L. S.]
HENRY MORGAN. [L. S.]
PROVIDENCE & STONINGTON STEAMSHIP CO.,
By C. G. BABCOCK, *Treas.* [L. S.]

Sealed in the presence of—
JAMES C. GERARD.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Samuel D. Babcock, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and free-
22 holder within this State and is worth the sum of $1,000.00 over all debts and liabilities and exclusive of property exempt by law from levy and sale under execution.

S. D. BABCOCK.

Sworn to before me this 7th day of June, 1881.
JAMES C. GERARD,
Notary Public.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Henry Morgan, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this State and is worth the sum of $1,000.00 over all debts and liabilities and exclusive of property exempt by law from levy and sale under execution.

HENRY MORGAN.

Sworn to before me this 7th day of June, 1881.
JAMES C. GERARD,
Notary Public.

23 CITY AND COUNTY OF NEW YORK, *ss:*

I hereby certify that on this 7th day of June, 1881, before me personally appeared the above-named Samuel D. Babcock & Henry Morgan, to me known and known to me to be the individuals described in and who executed the above undertaking and severally acknowledged that they executed the same.

JAMES C. GERARD,
Notary Public.

Endorsed: — court. —— ——, plaintiff, against The Providence & Stonington Steamship Company, defendant. Petition and bond. —— ——, attorney for petitioner.

24 At a special term of the supreme court of the State of New York, held at the court-house, in the city and county of New York, on the 7th day of June, 1881.

Present: Hon. Charles Donohue, justice.

ALMIRA R. CLARE, as Administratrix of the Estate of Charles C. Clare, Deceased,
ag't
THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY.

A petition having been filed by the defendant in this cause, bearing date the 7th day of June, 1881, for the removal thereof into the circuit court of the United States for the southern district of New York, pursuant to the statutes of the United States in such case made and provided, and the said petitioner having offered good and sufficient sureties, pursuant to the directions of and as required by the said statute: Now, on motion of Mr. William P. Dixon,
25 of counsel for the said petitioner, it is declared that it is made to appear to the satisfaction of this court that the present suit is commenced in this court by a citizen of the State of New Jersey against a citizen of another State, to wit, the State of Rhode Island, and that the matter in dispute exceeds five hundred dollars, exclusive of costs; and it is further declared that it is made to appear to the satisfaction of this court that the said petitioner has fully complied with all the requirements of the said statutes in respect to the said petition and sureties.

It is hereby further declared and *and* ordered that this court accepts the petition and sureties offered by the petitioner, and that the said cause be, and the same hereby is, removed for trial into the next circuit court to be held in the southern district of the State of New York, pursuant to the said statutes; and

It is hereby further ordered that this court do proceed no
26 further therein, and that all proceedings in this court in the said cause be, and the same are hereby, stayed.

(S'd) C. DONOHUE, *J.*

STATE OF NEW YORK, }
City and State of New York, } *ss:*

I, William A. Butler, clerk of the said city and county, and clerk of the supreme court of said State for said county, do certify that I have compared the preceding with the original summons, complaint, notice, petition, bond, and order on file in my office, and that the same is a correct transcript therefrom and the whole of such original.

In witness whereof I have hereunto subscribed my name and affixed my official seal this seventeenth day of October, 1881.

[L. S.] WM. A. BUTLER, *Clerk.*

Endorsed: N. Y. supreme court. Almira R. Clare, adm'x, &c., *vs.* The Providence & Stonington Steamship Company. Certified copy record. U. S. circuit court. Filed Oct. 27, 1881. Joseph M. Deuel, clerk.

27 Circuit Court of the United States, Southern District of New York.

ALMIRA R. CLARE, as Administratrix, &c.,

ag'st

THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY.

This action having been originally commenced in the supreme court of the State of New York for the city and county of New York, and having been duly removed in this court on the application of the defendant, and a duly certified copy of the record in said cause in said New York supreme court having been duly filed this day in this court, and said defendant having appeared herein by its attorney, William P. Dixon:

28 Now, on motion of William P. Dixon, attorney for the defendant, it is ordered that the said cause do proceed in this court as if it had originally been commenced herein, and that the appearance of William P. Dixon for said defendant be, and hereby is, noted and entered.

New York, October 17, 1881.

29 *Answer.*

Circuit Court of the United States, Southern District of New York.

ALMIRA R. CLARE, as Administratrix of the Estate of Charles C. Clare, Deceased,

against

THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY.

The Providence and Stonington Steamship Company, defendants in this action, appearing therein by William P. Dixon, their attorney, answer the complaint as follows:

First. The defendant admits that is a corporation duly created, organized, and existing by and under the laws of the State of Rhode Island, and is a common carrier of passengers and freight, and as such owning and running a line of steamships between the city of New York and Stonington, Connecticut, and that it has an office or place of business in said city of New York, and was at or about the time mentioned in the complaint owner of the steamships

30 "Narragansett" and Stonington.

Second. The defendants have no knowledge or information sufficient to form a belief as to the allegations, save and except the allegations of negligence in the second and third paragraphs or subdivisions of the complaint and between folios 3 & 6 thereof, and therefore controvert and deny the same and each of them; and as to each and every allegation of negligence on the part of said defend-

ants, their agents, or servants, in said complaint contained, the defendants deny that they, their agents, or servants, conducted themselves negligently or carelessly or misbehaved in regard to the said passengers or the transportation thereof in their calling as carriers or otherwise, and deny that any loss, destruction, damage, or injury, as alleged in the complaint, was caused to the plaintiff by reason of any negligence or want of care of these defendants, their agents, or servants, or in violation of any agreement or duty on their part; and they further deny that by reason of the premises in the
31 complaint alleged the plaintiff sustained damages to the amount of five thousand dollars or in any amount whatever; and these defendants allege, further, that the statute of the State of Connecticut referred to in the complaint is a local statute and confers upon this court no jurisdiction of the subject-matter of this action, and that there is in this court no right of action as set out in the complaint, and that the complaint should be dismissed for want of jurisdiction.

Third. The defendants, further answering said complaint, aver that prior to the commencement of this action and on or about the 16th day of June, 1880, the defendants, in conformity with the act of Congress, passed March 3d, 1851, entitled "An act to limit the liability of ship owners and for other purposes," presented to and filed in the district court of the United States for the southern district of New York, within which district this action is pending, their libel or petition, of which a copy is annexed, marked "A;" that the several allegations in said libel contained are true, and at the
32 time of filing thereof no libel against said steamship "Narragansett" had been filed in any district for any loss, destruction, damage, and injury therein mentioned; that upon reading and filing the same the said district court did, on the said 16th day of June, 1880, make and enter an order, of which a copy is annexed, marked "B," whereby it was ordered that said petitioners transfer their interest in said steamship "Narragansett" and her freight for the voyage in said libel and petition mentioned to Samuel H. Lyman, Esqr., to act as trustee for the person or persons who may prove to be legally entitled thereto, pursuant to the provisions of the act of Congress in that behalf above referred to; that upon reading and filing said libel and petition and the said last-named order and the instrument of transfer therein mentioned, duly executed and bearing date the 16th day of June, 1880, the said district court did, on said 16th day of June, 1880, make and enter a
33 further order, of which a copy is annexed, marked "C," a copy whereof was duly served on the attorney for the plaintiff in this action on the 25th day of June, 1880; that on the same day, in pursuance of said last-named order, a monition was issued out of said district court to the marshal of the United States for the southern district of New York, of which a copy is hereto annexed, marked "D," a copy of which monition was duly served on the plaintiff's attorney herein on the 25th day of June, 1880; that on the same day the said marshal, in pursuance of said monition, caused to

duly issued and thereafter duly published a citation, of which a copy is annexed, marked "E."

That on the said 16th day of June, 1880, the said district court made a further order in the premises, of which a copy is hereto annexed, marked "F," which order was duly served upon the attorney for the plaintiff in this action on the 25th day of June, 1880.

34 That such proceedings were duly had and taken in the said suit in the district court of the United States for the southern district of New York as are recited in said last-mentioned order, and that the said order still remains in full force and unrevoked.

Fourth. That on the 5th day of October, 1880, at the time when the monition above mentioned was returnable before said district court, proclamation was duly made in the said district court for all persons claiming damages for any loss, destruction, damage, or injury occasioned by the said disaster on said steamship to appear and present their claims and such answers or exceptions as they should be advised, but that the said plaintiff did not then nor has she presented any such claim, answer, or exceptions in such proceeding in the said district court.

Fifth. That thereupon afterwards a decree was duly made and entered by the said district court in the proceedings aforesaid,

35 bearing date the 7th day of October, 1880, a copy whereof is hereto annexed, marked "G," and forms a part of this answer, whereby the plaintiff and all other persons and parties than those having presented claims as aforesaid, or to whom leave was thereby expressly granted to file claims, were forever debarred from presenting, filing, or prosecuting any claims for damages for any loss, destruction, damage, or injury occasioned by the disaster on board the said steamship "Narragansett" on the 11th day of June, 1880, in the said libel and petition mentioned; and the said plaintiff and all other persons and parties were adjudged to be in default in respect to answering or excepting to the said libel and petition, and it was ordered, adjudged, and decreed that as to all such persons and parties so in default in respect to answering or excepting to such libel (including this plaintiff) the allegations of said libel and petition stand as confessed and admitted; that such proceedings

36 have been had and taken in the said suit in the district court of the United States for the southern district of New York as are recited in the said last-mentioned decree, and the said decree still remains in full force and unrevoked, and defendants crave leave to refer to the record of said suit or proceeding in said district court as a part of their answer herein, and insist that by virtue of the premises the right of the plaintiff, if any such she ever had, to prosecute this action against these defendants has ceased and determined, and any and all claims and demands which the plaintiff may have ever had against these defendants for or by reason of any of the matters and things in the complaint herein mentioned and referred to have been and are wholly barred; and that by reason of the matters and proceedings hereinbefore mentioned and referred

to this court has no jurisdiction of any claim against the defendants for any such loss, destruction, damage, or injury as in said
37 complaint alleged or referred to, or of any claim for any loss, destruction, damage, or injury occasioned by the disaster to or on board of the said steamship "Narragansett" hereinbefore and in said libel and petition mentioned.

Wherefore the defendants pray that the complaint of the plaintiff herein be dismissed with costs.

WM. P. DIXON,
Defendants' Attorney.

CITY AND COUNTY OF NEW YORK, *ss:*

Courtland F. Babcock, being duly sworn, says that he is the president of the Providence and Stonington Steamship Company, the defendants in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein to be alleged on information and belief, and as to those matters he believes it to be true.

C. G. BABCOCK.

Sworn to before me this 7th day of June, A. D. 188–.

JAMES C. GERARD,
Notary Public, N. Y. Co.

38 "A."

To the honorable William G. Choate, judge of the district court of the United States for the southern district of New York:

The libel and petition of the Providence and Stonington Steamship Company, owners of the steamspship or vessel called the "Narragansett," hereinafter named, in a cause of action, civil and maritime, respectfully shows:

First. That your petitioners are a corporation duly created and organized by and under the laws of the State of Rhode Island, owning and running a line of steamships for the carriage of freight and passengers between Stonington, in the State of Connecticut, and the city of New York, and at the several times hereinafter stated were the owners of the said steamship "Narragansett," which was one of the vessels of said line and duly enrolled at the office of the collector of customs at Providence.

Second. That on the night of the eleventh day of June,
39 1880, the said steamship "Narragansett" set sail from the said port of New York, on one of her regular trips in said line, having on board a large and valuable cargo belonging to several owners or freighters who had shipped the same thereon to be carried on freight to and there delivered to various consignees according to the respective directions accompanying the same, and also having on board divers other property, goods, and merchandise which was owned by or entrusted to the care or custody of the passengers on board said steamship.

Third. That the said vessel with said cargo and other property on

board prosecuted said voyage in safety until the arrival, on the night of the eleventh day of June, 1880, at a point in her usual course nearly opposite Cornfield light-ship, off the Connecticut shore and several miles distant therefrom, when she was run into and struck on the starboard side by the steamship "Stonington;" that
40 by the collision aforesaid a large hole was made in the starboard side of said steamship, by reason of which she filled, took fire and burned, and soon after sunk in about eight fathoms of water.

Fourth. That by reason of the disaster aforesaid almost the whole of the said cargo and other property above referred to was lost and destroyed and the said voyage was broken up; that the said steamship, cargo, and other property now remain at the place where she sunk, with the exception of small portions thereof which have been carried ashore at divers points, and that no freight has been received on said cargo or any part thereof.

Fifth. That the said collision happened and the loss, damage, injury, and destruction above referred to was done, occasioned, and incurred without the privity or knowledge of your petitioners.

Sixth. That nevertheless certain persons hereinafter
41 named, being or claiming to have been owners, shippers, or consignees of portions of said cargo so lost and destroyed on said vessel, have sued your petitioners in the supreme court of the State of New York, within the southern district of New York, for the loss and destruction of such portions of such cargo; and your petitioners, desiring as well to contest their liability and the liability of said vessel for the loss, destruction, damage, and injury occasioned by said disaster, and also to claim the benefit of limitation of liability provided for in the third and fourth sections of the act of Congress entitled "An act to limit the liability of ship-owners, and for other purposes," passed March 3d, 1851, are ready and willing and hereby offer to transfer their interest in such vessel and the freight pending on such voyage for the benefit of all such claimants to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person or persons who may prove to be legally entitled thereto.

42 Seventh. And your petitioners state the facts and circumstances by reason of which exemption from liability is claimed as follows, in addition to the facts hereinbefore alleged: That the said steamship was in all respects sound, staunch, and seaworthy, and properly manned, equipped, and provided for the voyage and service in which she was engaged, and under the command of proper and suitable officers therefor; that the said collision occurred through no fault or neglect on the part of the persons on board of or having charge of the navigation of the said steamship, but was entirely owing to the dangerous and narrow channel and difficult navigation and the dense fog, which rendered it impossible to see lights on other vessels.

That after the said collision all reasonable and proper steps were taken and adopted by those having charge of the said steamship to

prevent her striking and to prevent the loss, destruction,
43 damage, and injury above referred to, but the same was without avail.

Eight-. That the said steamship has not been libelled in any court to answer for any loss, destruction, damage, or injury occasioned or alleged to have been occasioned by said disaster; that the Moss Manufacturing Company of Westerly, Rhode Island, has commenced an action against your petitioners, as owners of said vessel, in the supreme court of the State of New York, claiming to recover the sum of twenty-five hundred dollars, the alleged value of merchandise alleged to have been lost on said vessel by said disaster and to have belonged to ——.

Ninth. That your petitioners are ignorant of the amount of the loss, destruction, damage, and injury suffered by the said several freighters and owners of goods, wares, and merchandise and other property on the said voyage; but, upon information and
44 belief, they aver the same to have been one hundred thousand dollars, and upon such information and belief they aver that the whole value of the said vessel and her freight for said voyage does not exceed the sum of one hundred thousand dollars, and that the whole value of the said vessel and her freight for said voyage is not sufficient to make compensation to each of said several freighters and owners for the loss and destruction suffered by them on said voyage.

Tenth. That all the passengers on board of said steamship agreed with your petitioners at the time they engaged their passage at the said port of New York and were notified at said time by your petitioners that the said steamship was not responsible for valuables unless bills of lading were signed for the same, and that all of the cargo carried upon such steamship was shipped by the shippers thereof and accepted by your petitioners at said city of New
45 York, and was agreed to be carried by said company upon the terms and conditions mentioned in the form of a bill of lading used by said company, petitioners, of which a copy is hereto annexed, marked "Exhibit I;" that if any merchandise or other articles belonging to any persons other than said passengers were contained in packages shipped by them as their luggage, or purporting to be such, shipment thereof was made at said city of New York without the knowledge or consent of your petitioners, and no agreement was made by your petitioners to carry such merchandise or other articles or any of them, and your petitioner is not liable for any loss or damage that may have happened thereto.

Wherefore your petitioner prays that this honorable court will appoint a trustee, pursuant to the provisions of the fourth section of the act of Congress above referred to, and will make an order for the transfer by your petitioners of their interest in said vessel and freight for the benefit of all such claimants, to act as such
46 trustee for the person or persons who may prove to be legally entitled thereto, and will thereupon, on compliance with such order, issue a monition against all persons claiming damages for the loss, destruction, damage, and injury occasioned by said disaster on

board of said vessel, citing them to appear before this court and make due proof of their respective claims at a time to be therein named, as to all which claims your petitioners will contest its liability and the liability of said vessel independently of the limitation of liability claimed under said act as aforesaid.

That the court will also designate a commissioner before whom such claims shall be presented in pursuance of such monition, and that upon the coming in of the report of said commissioner and confirmation thereof, if it shall appear that your petitioner is not liable for such loss, damage, destruction, and injury, it may be so
47 finally directed by this court and otherwise that the property and moneys which may come to the hands of such trustee as aforesaid (after payment of costs and expenses) shall and may be divided *pro rata* amongst the several claimants in proportion to the amount of their respective claims, and that in the meantime, and until the final judgment of the court shall be rendered herein, this court will make an order restraining the further prosecution of all and any suit or suits against your petitioner in respect of any such claim or claims, and particularly the said parties who have commenced the said suit within the southern district of New York, as hereinbefore specified.

And your petitioner will ever pray, &c.

(S'g'd) PROVIDENCE & STONINGTON S. S. CO.,
By D. S. BABCOCK, *President.*

WM. P. DIXON, *Proctor.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

48 David S. Babcock, of the city of New York, being duly sworn, deposeth and saith that he is the president of the Providence and Stonington Steamship Company, the petitioners in the foregoing petition named; that he has read the said petition and knows the contents thereof, and that the same is true, according to the best of his knowledge, information, and belief.

And further saith not.

D. S. BABCOCK.

Subscribed and sworn to before me this 16th day of June, 1880.
SAM'L H. LYMAN,
U. S. Com'r.

Endorsed: U. S. district court, southern district of New York. In the matter of the petition of the Providence & Stonington Steamship Company. Copy. Libel and petition. Wm. P. Dixon, proctor for petitioner, 50 Wall street. Original. Filed June 16, 1880.

49 At a stated term of the district court of the United States for the southern district of New York, held at the United States court-rooms, in the city of New York, on the 16th day of June, 1880.

Present: Hon. William G. Choate, district judge.

"B."

In the Matter of the Petition of THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY, Owners of the Steamship "Narragansett."

Upon reading and filing the petition of the Providence and Stonington Steamship Company, owners of the steamship "Narragansett," showing that they have been sued as such owners by certain persons claiming to have been owners of cargo destroyed on such vessel on the eleventh day of June, 1880, to recover for the loss, destruction, damage, and injury done to such cargo on board such vessel on that day, and that loss and destruction were
50 suffered by divers and several other freighters of goods, wares, and merchandise and other property on the same voyage, and the whole value of the said vessel and her freight for the said voyage is not sufficient to make compensation to each of said freighters and owners therefor, and that such damage and injury was done, occasioned, and incurred without the privity or knowledge of such owners, and that said petitioners desire to claim the benefit of the limitation of liability provided for in the third and fourth sections of the act of Congress entitled "An act to limit the liability of ship-owners, and for other purposes," passed March 3d, 1851, and also to contest their liability and the liability of said vessel for said loss, destruction, damage, and injury independently of the limitation of liability claimed under said act, said libel and petition also stating the facts and circumstances on which such exemption from and lim-
51 itation of liability are claimed, and praying proper relief in the premises in that behalf, and the owners having elected to make a transfer as hereinafter provided, it is hereby—

Ordered, in conformity with the said act of Congress and the rules of the Supreme Court of the United States made in pursuance thereof, that the said Providence and Stonington Steamship Company transfer their interest in the said steamship "Narragansett" and her freight for the said voyage for the benefit of all such claimants to Samuel H. Lyman, of the city of New York, who is hereby appointed, pursuant to the provisions of the fourth section of said act, to act as trustee for the person or persons who may prove to be legally entitled thereto.

WM. G. CHOATE.

A true copy.
[SEAL.] SAM'L H. LYMAN, *Clerk.*

Endorsed: U.S. district court, southern district of New York.
52 In the matter of the petition of the Providence and Stonington Steamship Company, owners of the steamship "Narragansett." Copy. Order appointing trustee. Wm. P. Dixon, proctor for petitioner, 50 Wall St.

53 At a stated term of the United States district court for the southern district of New York, held at the United States court-rooms, in the city of New York, on the 16th day of June, 1880.

Present: Hon. William G. Choate, district judge.

"C."

In the Matter of the Petition of THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY, Owners of the Steamship "Narragansett."

Upon reading and filing the libel and petition of the Providence and Stonington Steamship Company, owners of the steamship "Narragansett, sworn to on the 16th day of June, 1880, and the order of this court made thereon, bearing date on the 16th day of June, 1880, whereby it was ordered that the said petitioners transfer their interest in such vessel and her freight for the voyage in said libel and petition mentioned to Samuel H. Lyman, Esqr., to
54 act as trustee for the person or persons who may prove to be legally entitled thereto, pursuant to the provisions of the act of Congress in that behalf in said libel and petition referred to, and upon reading and filing the instrument of transfer duly executed by said company, bearing date the 16th day of June, 1880, whereby it appears that such vessel and freight have been duly transferred to such trustee, pursuant to such order and the said act and the rules of the Supreme Court of the United States in that behalf, upon motion of William P. Dixon, proctor for said petitioners—

Ordered, That a monition issued out of and under the seal of this court against all persons claiming damages for the loss, destruction, damage, and injury occasioned by the disaster on board of the said steamship "Narragansett" on the 11th day of June, 1880, referred to in said petition, citing them to appear before this
55 court and make due proof of their respective claims at or before the first Tuesday of October, 1880, at 11 o'clock in the forenoon, and Samuel H. Lyman, Esqr., a commissioner of this court, is hereby designated as the commissioner before whom such claims shall be presented in pursuance of said monition.

And it is further ordered that public notice of such monition be given as in other cases, except that the publication in a newspaper may be for the space of fourteen days, and thereafter once in each week, and that a copy of such monition and of this order be personally served on the attorneys, proctors, or solicitors of record for the plaintiffs or libellants in each of the suits brought and pending in any court in the United States against "the Providence and Stonington Steamship Company," or against the said steamship "Narragansett," to recover for any such damages, such serv-
56 ices to be made at least one month prior to said first Tuesday of October, 1880.

And it is further ordered that in the place and stead of the service hereinbefore ordered to be made upon the attorneys, solicitors, or proctors for the said parties prosecuting any such suit or suits, service of such monition and order may in any case be made upon the party or parties prosecuting such suits, respectively, or upon any of them, or, in case the attorneys, solicitors, or proctors for either or any of such parties be absent from their office, by delivering copies of such monition and order to the person in charge of such office or placing them in some conspicuous place therein.

(Signed) WM. G. CHOATE.

A true copy.

[Seal U. S. District Court, Southern District of N. Y.]

S. H. LYMAN, *Clerk.*

57 Endorsed: District court of the United States, southern district of New York. In the matter of the petition of the Providence and Stonington Steamship Company, &c. Copy. Order for monition to issue. Wm. P. Dixon, proctor for petitioners, 50 Wall St., N. Y.

58 "D."

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, Greeting:

Whereas a libel and petition hath been filed in the district court of the United States for the southern district of New York on the 16th day of June, in the year of our Lord one thousand eight hundred and eighty, by the Providence and Stonington Steamship Company, owners of the steamship "Narragansett," in a cause of action, civil and maritime, concerning the loss, destruction, damage, and injury occasioned by the disaster to the said steamship "Narragansett" on the eleventh day of June, 1880, for the reasons and causes in the said libel and petition mentioned, and praying a monition of the said court in that behalf to be issued, and that all persons
59 claiming damages for any such loss, destruction, damage, or injury may be thereby cited to appear before the said court and make due proof of their respective claims, and all proceedings being had that if it shall appear that the said petitioners are not liable for such loss, damage, destruction, and injury it may be so finally decreed by this court, and that otherwise the proceeds of such vessel and freight on said voyage (after payment of costs and expenses) shall be divided *pro rata* amongst the several claimants in proportion to the amount of their respective claims:

You are hereby commanded to cite all persons claiming damages for any loss, destruction, damage, and injury occasioned by said disaster to said vessel, to appear before the said court and make due proof of their respective claims before Samuel A. Lyman, a commissioner of this court, at his office, No. 62 United States post-
60 office building, in said city of New York, at or before the first Tuesday of October, 1880, at eleven o'clock in the forenoon.

And what you shall have done in the premises do you then make return thereof to this court, together with this writ.

Witness the Honorable William G. Choate, judge of the said court, at the city of New York, this 16th day of June, in the year of our Lord one thousand eight hundred and eighty.

[L. S.] SAMUEL H. LYMAN, *Clerk.*

I hereby depute James C. Gerard to execute the within writ.

N. Y., June 25, 1880.

LOUIS F. PAYN,
U. S. Marshal.

In obedience to the within monition I have cited all persons interested to appear as therein required, as appears by the proof of publication hereto annexed, and I have served a copy of said monition, a copy of the order for said monition to issue, and a copy of
61 the restraining order issued herein upon Morris F. Dowley, Esq., attorney for Minnie Leonard, and Clarence R. Leonard, and upon Messrs. Martin & Smith, attorneys for the Mass. Manufacturing Company, as appears by the affidavit annexed hereto.

N. Y., October 5, 1885.

LOUIS F. PAYN,
U. S. Marshal.

Endorsed: United States district court, southern district of New York. In the matter of the petition of the Providence and Stonington Steamship Company, &c. Copy. Monition. Wm. P. Dixon, proctor for petitioners, 50 Wall St., N. Y.

62 "E."

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The President of the United States of America to the marshal of the southern district of New York, Greeting:

Whereas a libel and petition hath been filed in the district court of the United States for the southern district of New York on the 16th day of June, in the year of our Lord one thousand eight hundred and eighty, by the Providence and Stonington Steamship Company, owners of the steamship "Narragansett," in a cause of action, civil and maratime, concerning the loss, destruction, damage, and injury occasioned by the disaster to the said steamship "Narragansett" on the eleventh day of June, 1880, for the reasons and causes in the said libel and petition mentioned, and praying a monition of the said court in that behalf to be issued, and that all persons
63 claiming damages for any such loss, destruction, damage, or injury may be thereby cited to appear before the said court and make due proof of their respective claims, and all proceedings being had, that if it shall appear that the said petitioners are not liable for such loss, damage, destruction, and injury it may be so finally decreed by this court, and that otherwise the proceeds of such vessel and freight on said voyage (after payment of costs and expenses) shall be divided *pro rata* amongst the several claimants in proportion to the amount of their respective claims:

You are hereby commanded to cite all persons claiming damages for any loss, destruction, damage, and injury occasioned by said disaster to said vessel to appear before the said court and make due proof of their respective claims before Samuel H. Lyman, a commissioner of this court, at his office, No. 62 United States
64 post-office building, in said city of New York, at or before the first Tuesday of October, 1880, at eleven o'clock in the forenoon.

And what you shall have done in the premises do you then make return thereof to this court, together with this writ.

Witness the Honorable William G. Choate, judge of the said court, at the city of New York, in the southern district of New York, this 16th day of June, in the year of our Lord one thousand eight hundred and eighty.

SAMUEL H. LYMAN, *Clerk.*

WM. P. DIXON,
Proctor for Petitioner.

In pursuance of a certain monition, under the seal of the district court of the United States for the southern district of New York, of which the foregoing is a copy, I do hereby cite all persons claiming damages for any loss, destruction, damage, or injury occa-
65 sioned by the disaster to the steamship "Narragansett," therein referred to, to appear before the said court and make due proof of their respective claims before Sam'l H. Lyman, Esqr., a commissioner of said court, at his office, No. 62, in the United States post-office building, in the city of New York, at or before the first Tuesday of October, 1880, at 11 o'clock in the forenoon of that day.

Dated the 21st day of June, 1880.

LOUIS F. PAYN,
United States Marshal.

WM. P. DIXON,
Proctor for Petitioners, 50 Wall St., N. Y.

Endorsed: United States district court, southern district of New York. In the matter of the petition of the Providence and Stonington Steamship Company, &c. Copy. Monition. Wm. P. Dixon, proctor for petitioners, 50 Wall St., N. Y.

66 At a stated term of the district court of the United States for the southern district of New York, held at the United States court-rooms, in the city of New York, on the 16th day of June, 1880.

Present: Hon. William G. Choate, district judge.

"F."

In the Matter of the Petition of THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY, Owners of the Steamship "Narragansett."

Upon reading and filing the libel and petition of the Providence and Stonington Steamship Company, owners of the steamship "Narragansett," showing that they have been sued as such owners by certain persons claiming to have been owners of cargo destroyed on said vessel, on the eleventh day of June, 1880, to recover for the loss and destruction, damage and injury done to such cargo
67 on board such vessel on that day, and that loss and destruction was suffered by divers and several other freighters and owners of goods, wares, and merchandise, and other property on the said voyage, and that the whole value of the said vessel and her freight for the said voyage is not sufficient to make compensation to each of said freighters and owners therefor, and that said loss, damage,

and injury was done, occasioned, and incurred without the privity or knowledge of such owners, and that said petitioners desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the act of Congress entitled "An act to limit the liability of ship-owners, and for other purposes," passed March 3d, 1851, and also to contest their liability and the liability of the vesssel for said loss, destruction, damage, and injury independently of the limitation of liability claimed under said act, said libel and peti-
68 tion also stating the facts and circumstances on which such exemption from and limitation of liability are claimed, and praying proper relief in the premises in that behalf, and the said owners, by their said libel and petition, having elected to make a transfer as hereinafter mentioned ;

And upon reading and filing the order of this court made thereon, bearing date on the 16th day of June, 1880, whereby it was ordered that the said petitioners thransfer their interest in such vessel and her freight for the said voyage to Samuel H. Lyman, Esqr., to act as a trustee for the person or persons who may prove to be legally entitled thereto, pursuant to the provisions of the act of Congress above referred to, and upon reading and filing the instrument of transfer, duly executed by said company, bearing date the 16th day June, 1880, whereby it appears that such vessel and freight have been duly
69 transferred to such trustee, pursuant to such order and the said act and the rules of the Supreme Court of the United States in that behalf, and upon reading and filing the order made herein, bearing date on the 16th day of June, 1880, directing a monition to issue, out of and under the seal of this court, citing all persons claiming damages for the loss, destruction, damage, and injury occasioned by said disaster on board of said steamship " Narragansett" on the eleventh day of June, 1880, to appear before this court and make due proof of their respective claims, and upon reading and filing the monition issued thereunder, and upon motion of William P. Dixon, proctor, for said petitioners:

Ordered, That the Moss Manufacturing Company of Westerly, Rhode Island, in said libel and petition mentioned, their agents and attorneys, refrain from the further prosecution of the
70 suit commenced by them, as stated in said petition, in the supreme court of the State of New York against the said petitioners to recover for the loss of cargo by the disaster on said steamship " Narragansett" on the the eleventh day of June, 1880.

And it is further ordered that the prosecution of all or any suit or suits against the said petitioners in respect of any claims for damages for any loss, destruction, damage, or injury occasioned by the said disaster to the said steamship " Narragansett" in said libel and petition referred to be, and the same is hereby, restrained.

And it is further ordered that this order be served within any district or districts of the United States other than the southern district of New York by the United States marshal for such other district or districts, respectively, by delivering a copy of such
71 original order and exhibiting a certified copy thereof to the party or parties to be served, and that service be made thereof

upon the attorneys, solicitors, proctors, or counsel for the plaintiffs, complainants, or libellants prosecuting any suit or suits in such other district or districts against the said petitioners to recover for any loss, destruction, damage, or injury occasioned or alleged to have been occasioned by said disaster, and that where any party to be served herewith is a corporation service thereof may be made upon its president, vice-president, secretary or treasurer.

WM. G. CHOATE.

Endorsed: U. S. district court, southern district of New York. In the matter of the petition of the Providence and Stonington Steamship Company, owners of the steamship "Narragansett." Copy. Order restraining suits. Wm. P. Dixon, proctor for petitioners, 50 Wall St., N. Y.

72 At a stated term of the district court of the United States for the southern district of New York, held at the United States court-rooms, on the 7th day of October, 1880.

Present: Hon. William G. Choate, district judge.

"G."

In the Matter of the Petition of THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY, Owners of the Steamship "Narragansett."

Upon reading and filing the libel and petition of the Providence and Stonington Steamship Company, owners of the steamship "Narragansett," showing that they have been sued as such owners by certain persons claiming to have been owners of cargo destroyed on said vessel on the 11th day of June, 1880, to recover for the loss and destruction, damage and injury done to such cargo on board said vessel on that day, and that loss and destruction were
73 suffered by divers and several other freighters and owners of goods, wares, and merchandise, and that the whole value of the said vessel and her freight for the said voyage is not sufficient to make compensation to each of said freighters and owners thereof, and that such loss, damage, and injury were done, occasioned, and incurred without the privity or knowledge of such owners, and that the said petitioners desire to claim the benefit of the limitation of liability provided for in the third and fourth sections of the act of Congress entitled "An act to limit the liability of ship-owners, and for other purposes," passed March 3d, 1851, and also to contest their liability and the liability of said vessel for said loss, destruction, damage, and injury independently of the limitation of liability claimed under said act, said libel and petition also stating the facts and circumstances on which such exemption from and limitation of liability are claimed, and praying proper relief in the prem-
74 ises in that behalf, and the said owners, by their said libel and petition, having elected to make a transfer as hereinafter mentioned;

And upon reading and filing the order of this court made thereon, bearing date on the 16th day of June, 1880, whereby it was ordered

that the said petitioners transfer their interest in such vessel and her freight for the said voyage to Samuel H. Lyman, Esqr., to act as trustee for the person or persons who may prove to be legally entitled thereto, pursuant to the provisions of the act of Congress above referred to; and upon reading and filing the instrument of transfer duly executed by said company, bearing date the 16th day of June, 1880, whereby it appeared that such vessel and freight have been duly transferred to said trustee, pursuant to said order and the said act and the rules of the Supreme Court of the United States in that behalf;

75 And upon reading and filing the order made herein, bearing date on the 16th day of June, 1880, directing a monition to issue out of and under the seal of this court, citing all persons claiming damages for the loss, destruction, damage, and injury occasioned by the said disaster on board the said steamship "Narragansett" on the 11th day of June, 1880, to appear before this court and make due proof of their respective claims on or before the first Tuesday of October, 1880, at 11 o'clock in the forenoon, and designating Samuel H. Lyman, commissioner of said court, as the commissioner before whom such claims shall be presented, in pursuance of such monition, and further directing public notice of such monition to be given as in other cases, and by further publication once in each week thereafter until the return of such monition, and di-

76 recting further notice thereof to be served upon the persons prosecuting any suits in any courts in the United States against the said petitioners or the said steamship to recover for any such damages, or upon their attorneys, solicitors, or proctors, as by said order is provided;

And upon reading and filing the monition issued out of and under the seal of this court, bearing date the 16th day of June, 1880, to the marshal of the southern district of New York, against all persons claiming damages for any loss, destruction, damage, and injury occasioned by such disaster, citing them to appear before this court and make due proof of their respective claims at or before the first Tuesday of October, 1880, at eleven o'clock in the forenoon, at the office of Samuel H. Lyman, the commissioner designated by

77 this court as the person before whom proof of all such claims should be presented;

And upon reading and filing the affidavits of David S. Babcock, James C. Gerard, and J. A. Hilson, and the returns of the marshal of the United States for the southern district of New York, whereby it appears that said monition and the said order directing such monition to issue have been personally served upon the attorneys, proctors, or solicitors of record for the plaintiffs or libellants in each of the suits brought and pending in any court of the United States against the Providence and Stonington Steamship Company or against the said steamship "Narragansett" to recover for any such damages, as directed by said order of June 16th, 1880, and whereby it further appears that public notice of such monition has been given by publication in a certain newspaper, to wit, the New York Commercial Advertiser, for the space of fourteen days, and

78 thereafter in each week until this date, as directed by said order of June 16th, 1880;

And upon reading and filing the report of Samuel H. Lyman, a commissioner of this court, who was designated by said order of June 16th, 1880, as the commissioner before whom claims for damages for the loss, destruction, damage, and injury occasioned by said disaster should be presented, whereby it appears that claims for such damages have been presented to him by the following persons and parties: W. H. Sanborn, Diamond Hill, R. I.; James H. Wilcox, Providence, R. I., and Lewis De Groff & Son, of the city of New York, and James H. Durgan, of Bradford, Mass., and that no claims are presented to him by any other persons or parties than those above named;

And upon all the papers and proceedings in this matter, and on the return of said motion, proclamation having been duly
79 made for all persons claiming damage for any loss, destruction, damage, or injury occasioned by the disaster on board said steamship aforesaid on the eleventh day of June, 1880, in said libel and petition mentioned, to appear and present their claims and such answers or exceptions as they should be advised, and no claims having been presented and proved and no answer or exceptions to said libel and petition having been filed by or on behalf of any persons, it is, upon motion of William P. Dixon, proctor for said petitioners, hereby ordered, adjudged, and decreed that the default of all persons and parties, except those who have appeared and filed claims herein, be, and the same hereby are, entered herein, and that all such persons and parties so in default be, and *that* are hereby, forever debarred from presenting, filing, or prosecuting any claims for
80 damages for any loss, destruction, damage or injury occasioned by the disaster on board the said steamship "Narragansett" on the 11th day of June, 1880, in the said libel and petition mentioned in any court or proceeding whatever.

And upon the like motion it is further ordered, adjudged, and decreed that the default in respect to answering or excepting to said libel and petition of all persons and parties be, and the same are hereby, entered, and that as to all such persons and parties so in default in respect to answering or excepting to such libel the allegations of such libel and petition stand as confessed and admitted.

And upon like motion it is further ordered, adjudged, and decreed that the balance of proceeds of the sale of said steamship "Narragansett," her engines, tackle, apparel, etc., now in the hands of
81 Samuel H. Lyman, Esq., as such trustee, after reserving therefrom a sum sufficient to pay the claims filed with him as commissioner, and after payment of costs and expenses of this proceeding, be forthwith paid to the Providence and Stonington Steamship Company or to their proctor, the petitioner herein.

WM. G. CHOATE.

A true copy.

[SEAL.] SAM'L H. LYMAN, *Clerk.*

Endorsed: U. S. district court, southern district of New York. In the matter of the petition of the Providence and Stonington Steamship Company, owners of the steamboat "Narragansett." Decree. William P. Dixon, proctor for petitioner, No. 50 Wall street, New York city.

82 U. S. Circuit Court, Southern District of N. Y.

ALMIRA R. CLARE, Adm'x, &c., of C. C. Clare, Dec'd, Plaintiff,

vs.

THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY, Defendant.

Consent is hereby given that Miller, Peckham and Dixon be substituted in my place and stead as attorneys for defendant in the above-entitled action.

WM. P. DIXON, *Attorney for Def't.*
MILLER, PECKHAM & DIXON.

At a term of the said circuit court, held at the court-house, in the the city of New York, on the — day of January, 1882.
Present: Hon. —— ——.

83 On reading and filing the foregoing consent it is hereby ordered that Miller, Peckham and Dixon be, and they are hereby, substituted in place of William P. Dixon as attorneys for defendant in the above-entitled action.

SAM'L BLATCHFORD.

Endorsed: U. S. circuit court A. R. Clare, adm'x, &c., plaintiff, ag'st The P. & S. S. S. Co., defendant. Stipulation and order of substitution. Miller, Peckham & Dixon, attorneys for def't, No. 29 Wall St., New York city. U. S. circuit court. Filed Jan. 30, 1882. Joseph M. Deuel, clerk.

84 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Friday, the 17th day of April, in the year of our Lord one thousand eight hundred and eighty-five.
Present: The Honorable Alfred C. Coxe, sitting as circuit judge.

ALMIRA R. CLARE, as Administratrix of the Estate of Charles A. Clare,

vs.

THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY.

Now comes the plaintiff, by Isaac N. Miller, Esq., her att'y, and moves the trial of this cause; likewise comes the defendant, by Miller, Peckham & Dixon, Esq., its att'ys. Thereupon a jury is empannelled and the cause proceeds to trial. After hearing the evidence of the parties and the argument of counsel, on Monday, April 20th, 1885, the court directs the jury to find a verdict for the plaintiff for the sum of $5,000. Thereupon the jury render a verdict whereby they find for the plaintiff for the sum of $5,000.

85 On motion of counsel for defendant, the court orders that the defendant have a stay of proceedings for twenty days.

A copy.

TIMOTHY GRIFFITH, *Clerk.*

86 *Judgment. July 8th*, 1885.

United States Circuit Court for the Southern District of New York.

ALMIRA R. CLARE, as Administratrix of the Estate of Charles C. Clare, Deceased,

ag'st

THE PROVIDENCE AND STONINGTON STEAMSHIP COMPANY.

The issues in this action having been brought on for trial before Hon. Alfred C. Coxe, judge, and a jury, at a circuit court of the United States for the southern district of New York, held at the U. S. court-room, new post-office building, in the city of New York, on the 20th day of April, 1885, and said issues having been tried and a verdict for the plaintiff against the defendant for five thousand
87 dollars having been duly rendered on said 20th day of April, 1885, and plaintiff's costs and disbursements having been duly taxed at seventy-eight $\frac{25}{100}$ dollars, and the interest having been computed by the clerk at one thousand five hundred and twenty-two $\frac{50}{100}$ dollars:

Now, on motion of Isaac N. Miller, of counsel for said plaintiff, it is adjudged that said plaintiff recover of said defendant the sum of six thousand five hundred and twenty-two $\frac{50}{100}$ dollars, together with seventy-eight $\frac{25}{100}$ dollars costs and disbursements, amounting in all to the sum of six thousand six hundred $\frac{75}{100}$ dollars, and the plaintiff have execution therefor.

88 Judgment signed this 8th day of July, 1885.

JOHN A. SHIELDS,
Deputy Clerk.

(Endorsed:) U. S. circuit court, southern dist. of New York. Almira R. Clare, as administratrix, &c., plaintiff, ag't The Providence & Stonington Steamship Company. Judgment. Isaac N. Miller, attorney for pl'ff, 293 Broadway, New York city. U. S. circuit court. Filed July 8th, 1885. Timothy Griffith, clerk.

89 *Bill of Exceptions.*

Circuit Court of the United States for the Southern District of New York.

ALMIRA R. CLARE, Administratrix of the Estate of Charles C. Clare, deceased, Plaintiff,

vs.

PROVIDENCE AND STONINGTON STEAMSHIP COMPANY, Defendant.

This action came on for trial before the Hon. Alfred C. Coxe, one of the judges of this court, and a jury, at a circuit court held at the

new post-office building, in the city of New York, on the 17th day of April, 1885.

The plaintiff then, to maintain the issues upon her part, called Captain WILLIAM SMITH YOUNG, who, being duly sworn, testified as follows:

Q. Mr. Young, what is your business?

A. A mariner. I was in command of the Narragansett in June, 1880, at the time she was lost. The state of the weather at that time was foggy. The disaster was, we collided with the steamer Stonington and sunk at about half past 11 at night. I was in the pilot-house.

Q. How far could you see?

A. I might have seen the length of the boat. I did see the Stonington before the collision a very short time; not time enough
90 to clear her. The vessel struck the Narragansett just aft of the forward freight gangway. I couldn't say whether it was amidships or a little forward. The rate at which we were traveling was probably eleven knots.

Q. Could you see whether the Stonington was going rapidly or slowly?

A. I didn't know anything about her. She struck us on the starboard side.

Q. What resulted from the collision?

A. She sunk and took fire and burned.

Q. She did not sink before she took fire?

A. No, sir; she was sinking and burning at the same time. There was a hole stove in her side large enough to sink her. I couldn't tell how long it was before the vessel went down after the collision; a very few minutes. I think there were about three hundred passengers on board. When I saw the other boat I gave two whistles to go to the left. That is the signal for the other one to go to the left. I signaled to the engineer of our boat to stop and go back on the engine; he had scarcely time to back at all. After the Stonington collided with me I rung to stop going back, and to go ahead wide open for Cornfield shoal. Both did not strike more than once. She stopped just ahead of us after she got clear of us. There were no passengers thrown into the water only what jumped overboard. None of them was burned that I know of. The condition of the boat was good. Our life-boats were in order. The name of the engineer on board was, I think, Charles Frinkel.
91 I had an assistant to the engineer; his name was Thayer, I think.

Q. Was there at that time any rule established by the company about what courses you shall take when you are coming up and going down the Sound?

A. The captain is supposed to know the way himself.

Q. Had one pilot been discharged from that boat?

A. No, sir; it was not always customary to have two pilots. The pilot that night was a man by the name of Thompson. I think I went aboard of her as pilot about the 1st of April. I had been cap-

tain of all the boats. I was running that steamer as pilot, but was no stranger to her. I had been running on the Narragansett from April up to the time of this occurrence. I have been in the employ of the company since that time, and am still.

By the COURT: I have been master of her and all of them for the last twenty-five years.

By Mr. PECKHAM:

Q. I do not know whether you stated the condition of the wind or air?

A. There was a light breeze from the southwest; a two or three knot breeze for sailing vessels.

Defendant's counsel waives cross-examination.

Plaintiff then called HENRY SHEFFIELD, who, being duly sworn, testified as follows:

By occupation I am a pilot. In June, 1880, I was employed as pilot by the Providence and Stonington Steamship Company. On the night of June 11, 1880, I was on board the steamer Stonington. I was pilot in charge on that night on the Stonington.

92 Q. Please tell the jury what sort of a night it was.

A. It was a dense fog, sir.

Q. Was it a still, quiet night?

A. Yes, sir; I first sighted the Narragansett about 11.35, near midnight; at that time our speed was about eleven knots at hour. When we first were aware of the presence of the Narragansett she was off about 150 feet, going across the bow of our boat. We gave one bell, which means to slow the boat down. The second signal which I gave the engineer was to stop the boat—two bells. Soon after this I gave a third signal, two bells more, to back water; then I rang the jingle bell to back strong. We were in motion, going ahead some, not nearly stopped, when we struck the boat. It was not possible for me to stop our boat before we struck. We had not too much headway—were not going too fast to stop in that time; we were too close together when we met them to stop short. The Sound, at the place where this collision occurred, is about twelve miles wide.

Q. Did you receive any instructions from the company as to what course you should take through the Sound?

A. No, sir.

Q. What was the practice, with regard to the course you took, as to whether you took a direct course each way or not—in other words, did you go as short a course as you could?

A. Yes, sir.

Q. Did you have any different course when you were going from New York to Stonington from that which you took in coming from Stonington to New York?

A. No, sir; we always went on the same courses; I was not over three miles when this accident occurred.

93 By the COURT:

Q. At what hour of the night did the two boats usually meet?
A. They differ some, sir; about half past eleven or eleven thirty-five.

Cross-examination by Mr. PECKHAM:

Q. Were you blowing your whistles at the time of the collision and immediately prior to it?
A. Yes, sir.
Q. What whistle were you blowing?
A. One whistle, sir.
Q. What did it signify, long or short blast?
A. Short blast, to go to the right.
Q. Aside from that were you blowing any fog whistles?
A. We were before that.
Q. What do you mean by fog whistles?
A. A long distinct whistle.
Q. How long had you been blowing fog whistles?
A. Ever since we started from the dock at Stonington—half past nine.
Q. With how short intervals?
A. About three times a minute; we had been doing that up to the time of the collision; we heard whistles from the Narragansett about three to five minutes off from her; when we heard that whistle we put her wheel aport; we heard the whistle on our port bow about a point and a half; we put our helm to port.
Q. When you say that you heard the whistle of the Narragansett on your port bow—port bow means the left-hand side as you look towards your bow?
A. Yes, sir.
Q. And when you put your helm to port that means to turn your bow around to the right-hand side?
A. Yes, sir.
94 Q. So that putting your helm to port would throw your boat still farther away from the Narragansett?
A. Yes, sir.
Q. After you gave the order to port your helm did you give any other order about the helm?
A. To alter the course more to the right.
Q. Did you give any other order about porting your helm after the first order; did you put your helm hard aport?
A. Yes, sir.
Q. Was there any interval of time between the first order and the second?
A. No, sir; they were close together.
Q. You gave the order "aport," "hard aport," one directly following the other?
A. Yes, sir.
Q. When you gave the order to port your helm what effect did

that have upon the course of the Stonington, of which you were on board?

A. About five points; that sheered her as much as five points to the northward. At the time of the collision we were running at least five points to the northward of where we were when we heard this whistle on our port bow.

Q. Hearing the whistle of the boat on your port bow in a fog, is it not the proper order to port your helm; is there any other proper manœuvre with the helm than to port it in such a case?

A. No, sir; when we first saw the Narragansett she was crossing our bow and about one hundred and fifty feet ahead; we struck her aft of the forward gangway.

95 Q. Suppose you had been going at half that speed, could you have avoided striking her?

A. No, sir.

Q. You would have struck her a little further aft?

A. Yes, sir. The first light we saw was the head-light of the Narragansett; we did not see her colored lights at all. On the Stonington the lights were all burning aboard of her; we had a lookout on her bow by the capstan; I was in the pilot-house.

Q. Who else was in the pilot-house?

A. The captain and wheelman.

Q. There were eight points of the compass to the right angle, are there not?

A. Yes, sir.

Q. So that your five points would be a point more than forty-five degrees?

A. Yes, sir.

Q. Supposing the Narragansett heeded your whistle of one whistle to port her helm, could you come in collision?

A. No, sir. I know the Narragansett; I have been on board of her; she is a boat handy with her helm; she minds her helm as readily as the Stonington; if her helm had been ported at the same time as mine was her head would have gone off five points.

Q. And five points off each way it would have been pretty hard to collide?

A. Yes, sir. I have been at sea from Bangor, Maine, to Philadelphia; I have not been off the coast—that is, sailing in the ocean; I have been navigating in the Sound about thirty-four years.

Q. In navigating in the Sound what is the method or manner of navigating with respect to the different head lights or light-ships (I mean by head lights or light-ships light-houses) and with

96 respect to the time between light-houses and light-ships in going your course?

A. If a man goes on the Sound he don't go into navigation.

Q. He don't go into navigation in the sense of navigation on the ocean, in the sense of taking bearings to find out where is by the astronomical or sun observations. Is that what you mean?

A. Yes, sir. In running a steam vessel we steer by the compass from one light to the other.

Q. You are out of sight of land a great portion of the time?

A. Not in the Sound, sir.

Q. At night you are?

A. But we run from one light to the other.

Q. In ascertaining your position when it is dark night or foggy or any other difficulty of seeing the lights, how do you know when you have left one light, when you are in the neighborhood of another, when you cannot see it?

A. We run our time up and then we stop the boat and sound.

Q. Is that the definite method of navigation, the time elapsing from point to point to ascertain where you are?

A. Yes, sir; we keep an accurate record of that time; every trip that goes on our log.

Q. Say you are starting from light-ship "A," and you take definite course in order to reach light-ship "B." Supposing it be a night you cannot see light-ship "B" unless you are very close to it, how can you judge, then, when you are approaching the neighborhood of light-ship "B?"

A. We run by the time, and when the time is up we stop the boat and sound and listen for the bell.

97 Q. When your time is up do you go beyond that point if you cannot find light-ship "B?"

A. We turn back until we find it. The essential point in our navigation is to find the several points from one point to another; we judge when we arrive at that point and cannot see it by the time we have been running; time is a very essential element in our navigation in the Sound.

Q. Now, suppose that you slow up entirely or change your rate of speed, what means would you have of judging where you were?

A. We would not have any.

Q. Could you tell where you were at all?

A. Yes, sir; we would have to allow her time to be stopped—slowed up; we would have to make a number — experiments for any purpose of that kind; when we were running this night at this eleven knots that was at our fog speed; boats could run some considerable faster than that; she might go a mile or two more; that speed enables us to judge of the distance between points.

Redirect examination by Mr. MILLER:

We run by time between these head lights; if we stop for any reason we keep account of our time; yes, it is possible to stop and still know about where we are.

Q. Now, if you had been running and the Narragansett had been running at four miles an hour would the collision have been as strong as it was; would they have struck each other with the same force that they did in the present instance?

A. No, sir; if we were running five miles an hour between these head lights we would not keep our computations as well as to where we were as if we were running ten, because we have to go

98 faster to make our time; that is way below our running time; as between one head light and another, if we were running five miles, we could not compute our position at any given time as

readily as if we were running ten; by figuring up the time we could; by keeping an account of the stops and also keeping an account of the speed we are able to tell where we are. I had been employed as a pilot by the company about seven or eight years. In March, 1880, or near March of that year, I do not know whether there was any change made with regard to the number of pilots on the boats; when I was running before I was running alone as pilot; I had an assistant; I did not have that assistant this time; how long I had been running alone I can't say positively; it is customary to have two; I am in the employ of the company now.

Recross-examination:

Q. Captain, you say that you could tell your position if you were running at five miles as well as if you ran faster, etc.; is there a strong tide in the neighborhood where this collision occurred?

A. Yes, sir.

Q. Can you tell the set at which it run, the ebb and flood?

A. Yes, sir; off the Cornfield it sets about southeast to northwest.

Q. That would be across tide?

A. Yes, sir.

Q. Can you make the same allowance for tide when you are running at five that you can make when you are running at ten or twelve miles?

A. No, sir.

Q. The effect of the tide on the steerage would be quite different?

A. Yes, sir.

99 Q. Can you keep the same steerage-way when running at five miles as when running at ten?

A. No, sir.

Q. How is the boat as to comparative handiness of handling when you are running at high speed or low?

A. Running at high speed is the best.

Q. It sheers quicker when you are running at the high rate of speed?

A. Yes, sir.

Q. When you are running at regular times you have made allowance for the force of the tide at the different stages?

A. Yes, sir.

Q. If you ran at half that speed, at three, four, and five knots, you would have to make entirely different set of observations?

A. Yes, sir.

Q. Could you not halve it?

A. No, sir.

Q. There is no way of telling?

A. No, sir.

Plaintiff then called JOHN S. SMITH, who, being duly sworn, testified:

Direct examination by Mr. MILLER.

By occupation I am an engineer and have been ever since I was

21 years old; I am now 55. In June, 1880, I was on board the steamer Stonington as engineer of her, in the employ of the Providence and Stonington Steamship Company; I very well remember the night of June 11, 1880. I was in charge of the engine at the time on the Stonington. Immediately before the collision I received the usual signals to slow, stop, and go back, which I answered as quick as I could. In the act of backing I received two more bells; that signifies to stop backing and go ahead again; that was just about the time of the collision, slightly before, but the sound
100 of the bells was not out of hearing. I was in the act of answering that signal when the collision occurred. It was instantaneous. I should suppose we were going at the rate of ten and a half or eleven knots. I am in the employ of the company now as engineer of the same boat.

Defendant's counsel waived cross-examination.

Stacy R. Fisher, called by plaintiff and sworn, testified:

In June, 1880, I resided in Jersey City. I knew Charles C. Clare; he was a friend of mine. On the Sunday following the 11th of June, 1880, I went to Stonington and found the body of Charles C. Clare and brought the same to Jersey City for burial. What first led me to go to Stonington was newspaper reports and then information coming to me that Mr. Clare had lost his life by this accident. I found his body in the lower part of a furniture establishment, which was being temporarily used as a morgue.

It was conceded that plaintiff was duly appointed administratrix.

Plaintiff's counsel states that the answer admits that Mr. Clare was a passenger on the steamer Narragansett, and that he came to his death by reason of this collision.

Plaintiff rests.

Mr. Peckham opened the case for the defendant.

The defendant then, to maintain the issues on its part, by its counsel, Mr. Peckham, read in evidence, first, the certified copy of the record of the district court of the United States in the southern district of New York of the proceedings to limit the liability in
101 the matter of the steamboat Narragansett. The paper is marked Defendant's Exhibit No. 1, and is the same as the copy thereof annexed to the answer.

Captain Horace C. Lamphear was then called by the defendant, and, being duly sworn, testified as follows:

My business is steamboating; I have been engaged in that business twenty-eight years; I reside in New London at present; I am on the "City of Worcester" when she is running; she is laid up now; she is one of the New York and Norwich Transportation Company's line; I am her captain; I remember the disaster to the steamer Narragansett on the night of the 11th of June, 1880; I was on the City of New York that night; I was bound from New London to New York; we were behind the Stonington; when we came up to this place it was after the accident occurred; it was a foggy night;

after we came up we took some of the passengers aboard and then went on to New York; I remember on that night meeting the City of Boston first going eastward in the Sound from New York; we met her half way from Saybrook to Bartlett's Reef light-ship; I heard her whistle before we met her; subsequently to meeting that boat we did not meet any other till after we left the wreck of the collision; afterwards we met the City of Norwich; we heard her whistle, but it seems they did not hear ours; we were coming to the westward; she was going to the eastward; I know they didn't hear our whistle, because he said he didn't hear it afterwards.

102 Q. Captain, in the navigation of Long Island Sound, in case of a fog, I want you to explain to the jury the method of navigating the Sound; how you run, and what, in your judgment, is the safest rate of speed, and the reasons why.

Mr. MILLER; I object to that portion of the question which asks "What, in your judgment, is the safest rate of speed?"

A. We run the same speed in a fog as we do when it is pleasant weather; we always did do it, and we think it is more safe to do it.

Mr. MILLER: I ask that that part of the answer which is in response to that portion of the question objected to, namely, "and we think it more safe to do it," be stricken out.

The COURT: That may be stricken out.

Mr. PECKHAM: I except to that.

Q. Explain to the jury why.

Counsel for plaintiff objects to the question; objection sustained; defendant's counsel excepts.

Q. Did you ever hear of any steamboat running in any other way, viz., as fast in a fog as in fair weather?

Counsel for plaintiff objects; objection sustained; defendant excepts.

Q. You say that you can sheer quicker that way, whether you are are advised of the proximity of another boat by sound or by sight?

A. When I get the sound of a steamboat nearly endwise ahead I always stop the boat and blow three whistles, but if she is off two points, so that I can hear her on either bow, going to the right, I blow one whistle; going to the left I blow two whistles.

Q. Are there any other reasons than the readiness with which you can sheer the boat to one way or another for navigating

103 at that speed rather than at a lower speed?

A. I don't know. I can't say we could not handle the boat at all at a lower rate of speed where we have plenty of room.

Q. I speak with reference to telling where you are.

A. We generally stop about five minutes, running an hour's time, to feel our way.

Q. Is the sounding of the Sound any definite indication as to where you are, so as to tell your locality as different from any other place in the Sound of the same depth of water?

A. There are plenty of places where the sounding is about the same.

Q. When you are approaching a certain definite place, as, for instance, Cornfield Light shoal, does the sounding tell you your whereabouts?

A. We sound down there when we do not make the light-ship.

Q. Your course that you steer and your sounding indicates to you, approximately, your position when you get it accurately by compass?

A. Yes, sir.

Q. What would be the effect, Captain, on your knowledge of where you are at any time between these points, if you change your rate of speed?

A. We would guess at it. I suppose that would be the only thing we could do. I would not really dare to run a boat that way. I should not think it would be safe to do it. I never did it.

Q. Why shouldn't you think it would be safe?

A. I think we would be apt to drift more than we believed. There are a great many cross-tides along by Faulkner's Island and Cornfield light-ship. It is very bad there. The tide runs pretty strong there, and it is a cross-tide, and, going slow, we drift a good
104 ways—how much I cannot say. We go about thirteen miles an hour generally.

Q. You judge in the fog from your continued and long experience?

A. Yes, sir; we allow for head tides and fair tides and winds.

Q. Are fogs very common on Long Island sound?

A. Yes, sir; we are apt to have it almost any time. It comes right up quick when it does come generally.

Cross-examination By Mr. BREWSTER:

Q. Did you ever know a fog so thick that you did not run?

A. Yes, sir; that is, after we get to the head of the sound.

Q. Did the boats run last night or yesterday the same as if there had been no fog?

A. Not around here in the river, but when they get up to Throgg's point. I don't know that the boats sometimes omit their trips in consequence of the fog unless it was last night. We left New London in a fog that night (in June, 1880), and it was very thick. If we are about meeting a vessel going in the opposite direction we give the signal as to which side we expect her to pass. We expect to hear an answer to that if they hear us. If we do not hear an answer we stop and blow three whistles.

By the COURT:

Q. Suppose in the fog you should meet a vessel two or three points on your starboard bow and away from you from one hundred and fifty to five hundred feet, would it, in your judgment, be good seamanship to port your helm?

A. No, sir; I should put it the other way to get clear from her.

105 By Mr. PECKHAM: If you should meet her a couple of points on her port bow, how would it be?

A. I should put it the other way.

By the COURT:

Q. The ordinary way is to port your helm?

A. Yes, sir; to go to the right.

By Mr. BREWSTER:

Q. Does not the direction in which the sound appears to be from you depend upon the air or wind?

A. Sometimes and sometimes it does not. It is very curious sometimes about the Sound. It gets us mixed up pretty well sometimes.

By the COURT:

Q. Eleven knots an hour is how many miles an hour?

A. I think twelve and a half; somewhere along there.

By Mr. PECKHAM: A knot is a nautical mile, isn't it, Captain?

A. Yes, sir.

By Mr. MILLER:

Q. Isn't that about your average speed; eleven or twelve knots in good weather?

A. I don't know about anybody else, but that is the way I do.

Q. Do you not feel, under such circumstances, that you are taking your chances of collision?

A. I suppose we take all the chances in the world. I cannot say anything about that. If we don't see anything we don't know; we may go within fifty feet of a vessel and not make any noise. We have often been within fifty feet and not made any noise.

By Mr. PECKHAM:

Q. I understand you to say that in such cases you take the risk; you take less risk than when you are going slowly?

A. There is always risk, but it is less risk to go faster than to go slower.

By Mr. MILLER:

106 Q. If, when you are going slowly, say at three or four knots an hour, you collide with another vessel, is the danger anything like as much as if you are going twelve or thirteen miles?

A. I dont think there would be any if we could hear one another.

By Mr. PECKHAM:

Q. It is very much less under control in regard to your handling and also in regard to your knowing where you are?

A. Yes, sir; but we have so much room in the Sound that if we hear a vessel two points on our bow either way we shear from it invariably?

Q. Your experience during the whole time you have navigated the Sound is that it is safer to go fast than slow?

A. Yes, sir; that is the way I have done for 28 years; ever since I have been steamboating, and I have had charge ever since that time.

By Mr. BREWSTER:

Q. How wide is the Sound at Cornfield shoal?

A. From Cornfield light-ship across there it must be seven or eight miles.

By Mr. MILLER:

Q. The channel along there is quite wide, is it not?

A. From the light-ship to Long Island shore is all deep water.

Q. You would not in any sense call it a narrow and dangerous channel, would you?

A. No, sir.

By Mr. PECKHAM:

Q. Captain, if you know where you are there is plenty of room in this part of the Sound?

A. Yes, sir.

Q. Do you know the width of the Sound there?

A. I think it must be six or seven miles from the light-ship to Long Island.

107 JOSEPH PHILLIPS was then called by defendant, duly sworn, and being examined by Mr. PECKHAM, testified:

I was on board of the Stonington on the night of the disaster to the Narragansett; my position was bow watchman. I heard a whistle from the Narragansett; the whistle sounded to me on the port bow, perhaps a point and a half or two points. I reported to the pilot-house; that, I should say, was about two or three minutes before they came together.

Defendant rests. Plaintiff rests.

Plaintiff then moved that the court direct the jury to find a verdict for the plaintiff for five thousand dollars.

Defendant moved that the court direct the jury to find a verdict for the defendant for this reason: That there is no evidence that the intestate went on this boat or within this boat. The evidence is that he is dead, but there is not the slightest evidence as to how he died.

By the COURT: Mr. Miller, if you can prove that deceased was on the boat I think you had better do so.

ALMIRA R. CLARE, for the plaintiff, being duly sworn and examined as a witness on her own behalf, testified:

By Mr. MILLER: I am the plaintiff in this action; the names of my children are Grace, Warren, Charles, and Howard. Charles is at home in bed; he is able to move about just a litile. On the after-

noon of June 11th I crossed to New York to take Charlie to
108 Mr. Clare. I crossed over by the boat and left Charlie with his father on the New York side of the bridge. I didn't go outside of the ferry.

By the COURT:

Q. Did you go with them to the boat?
A. Not to the boat, your honor.

Plaintiff then called CHARLES C. CLARE as a witness for plaintiff and he was sworn and examined by Mr. MILLER:

I remember the afternoon of June 11th, 1880. On that afternoon I went with my father, Charles C. Clare, on board the steamer Narragansett.

Q. Did you go with your father on a trip towards Stonington?
A. I don't know whether it was towards Stonington. I went out on the Narragansett on that afternoon. I was on the Narragansett at the time of the collision.
Q. Was your father with you shortly before the collision?
A. Yes, sir.
Q. Did you see him after the collision?
A. No, sir.

By Mr. PECKHAM: I now ask for the same direction from the court. Your honor will perceive that there is not a particle of evidence in the case now more than there was before that these parties went as passengers on this boat; there is no evidence that they bought a ticket or had any room, or that there was any contract made between the parties. There is not a particle of evidence that the intestate lost his life in consequence of this accident. He was seen dead in Stonington, but there is no evidence that any life was lost on that boat nor that anything happened to this man. On that ground I ask the court to direct a verdict for the defendant.
109 The COURT: I think the evidence now in the case is sufficient. I must deny the defendant's motion for a direction of a verdict and must grant the plaintiff's motion.

Defendant asked the court to direct a verdict for the defendant on the grounds—1. There is no evidence that plaintiff's intestate lost his life by reason of the collision or by the negligence of defendant.

The court denied the motion and defendant excepted.

Defendant conceded that if plaintiff could recover at all the damages were five thousand dollars.

The defendant asked to go to the jury on the questions—

1st. Whether the plaintiff's intestate had lost his life by reason of the collision of the steamboats Narragansett and Stonington.

2d. Whether the defendant or its servant had been guilty of any negligence in the navigation of the Stonington contributing to the collision.

The court denied such requests and each of them, and to the denial of each the defendant severally excepted.

The jury, by the direction of the court, returned a verdict for the plaintiff for five thousand dollars.

Therefore, because none of the said exceptions so offered and made to the decision and opinion of said court appear upon the records of said trial, on the prayer of the defendant this bill of exceptions is sealed.

ALFRED C. COXE. [L. S.]

110 [Endorsed:] U. S. circuit court, southern district of New York. Almira R. Clare *vs.* Providence & Stonington Steamship Co. Defendant's bill of exceptions. Miller, Peckham and Dixon, att'ys for def't, 29 Wall St., New York city. Correct. Isaac N. Miller, att'y for pl'ff. J'y 1, '85. U. S. circuit court. Filed July 6, 1885. Timothy Griffith, clerk.

111 *Bond for Damages and Costs.*

Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

ALMIRA R. CLARE, as Administratrix of the Estate of Charles C. Clare, Deceased, Plaintiff,

vs.

PROVIDENCE AND STONINGTON STEAMSHIP COMPANY, Defendant.

Know all men by these presents that we, Samuel D. Babcock, Henry D. Babcock, and the defendant, Providence and Stonington Steamship Company, are held and firmly bound unto the above-named plaintiff in the sum of fourteen thousand dollars, to be paid to the said plaintiff; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the tenth day of July, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas the above-named defendant has prosecuted a writ of error to the Supreme Court of the United States, wherein said Providence and Stonington Steamship Company is plaintiff in error and said Almira R. Clare, as administratrix of the estate of Charles C. Clare, deceased, is defendant in error, to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named defendant shall prosecute said writ of error to effect and answer all damages and costs if defendant fail to make said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

S. D. BABCOCK.
PROVIDENCE & STONINGTON ST'SHIP CO.,
By D. S. BABCOCK, *Pres't.*
H. D. BABCOCK.

Sealed and delivered and taken and acknowledged this 10th day of July, 1885, before me—

[L. S.] WM. HENRY KNOX,
Notary Public, N. Y. Co.

112 [Endorsed:] Vol. —, page —. U. S. circuit court. Elmira R. Clare, adm'x, &c., *vs.* Providence and Stonington Steamship Company, defendant. Bond for damages — costs on writ of error. Miller, Peckham & Dixon, 29 Wall St., N. Y., defend't's proctor-. I approve of the form of the within bond and of the sufficiency of the sureties thereon. Dated July 11, 1885. W. J. Wallace. U. S. circuit court. Filed Jul-, 13, 1885. Timothy Griffith, clerk.

UNITED STATES OF AMERICA, } *ss:*
Southern District of New York, }

Samuel D. Babcock, one of the foregoing sureties, being duly sworn, deposes and says that he resides at No. 636, Fifth avenue, in said district; that he is worth the sum of twenty-eight thousand dollars in real estate over and above all his just debts and liabilities.

S. D. BABCOCK.

Sworn to this 10th day of July, A. D. 1885, before me—

[L. S.] WM. HENRY KNOX,
Notary Public, N. Y. Co.

UNITED STATES OF AMERICA, } *ss:*
Southern District of New York, }

Henry D. Babcock, one of the foregoing sureties, being duly sworn, deposes and says that he resides at No. 21 West 49 street, in said district; that he is worth the sum of twenty-eight thousand dollars in real estate over and above all his just debts and liabilities.

H. D. BABCOCK.

Sworn to this 10th July, 1885, before me—

[L. S.] WM. HENRY KNOX,
Notary Public.

113 THE UNITED STATES OF AMERICA, *ss:*

To Almira R. Clare, as administratrix of the estate of Charles C. Clare, deceased, defendant in error, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held at Washington on the second Monday of October, A. D. eighteen hundred and eighty-five, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States for the southern district of New York, on the — day of July, 1885, wherein the Providence and Stonington Steamship Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy

justice not be done to the parties in that behalf and the said judgment set aside and judgment entered for said plaintiff for costs.

Dated New York, July 11th, 1885.

W. J. WALLACE,
Circuit Judge.

114 [Endorsed:] U. S. circuit court, southern district of New York. Almira R. Clare, adm'x, &c., plaintiff, against Providence & Stonington S. S. Co., defendant. Citation. Miller, Peckham & Dixon, attorneys for defendant, 29 Wall street, New York city. Due and timely service of a copy of the within citation is hereby admitted. New York, July 13, 1885. Isaac N. Miller, att'y for pl'ff. U. S. circuit court. Filed Jul. 13, 1885. Timothy Griffith, clerk.

Endorsed on cover: S. New York C. C. U. S. No. 265. The Providence & Stonington Steamship Company, plaintiff in error, *vs.* Almira R. Clare, as administratrix of Charles C. Clare, deceased. Filed August 5, 1885.

.45

127-45

United States Supreme Court.

PROVIDENCE AND STONINGTON STEAMSHIP COMPANY,
Plaintiff in Error,

vs.

ALMIRA R. CLARE, Administratrix of CHARLES C. CLARE, Deceased,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

MILLER, PECKHAM & DIXON,
Attorneys for Plaintiff in Error,
No. 29 Wall Street,
New York, N. Y.

SPANGENBERG & BISHOP, Stationers and Printers, 60 Liberty Street, N. Y.

UNITED STATES SUPREME COURT.

PROVIDENCE AND STONINGTON STEAMSHIP COMPANY,
Plff. in Error,

agst.

ALMIRA R. CLARE, Admr'x. of CHARLES C. CLARE, deceased,
Defendant in Error.

STATEMENT.

This action was commenced by the defendant in error against the plaintiff in error, in the Supreme Court of the State of New York, to recover damages for negligently causing the death of defendant in error's intestate.

On the ground that plaintiff below was a citizen of New Jersey, and defendant below a citizen of the State of Rhode Island, the action was on petition of defendant below removed to the Circuit Court of the United States, for the Southern District of New York.

Record p. 5, et seq.

The complaint or declaration of plaintiff below was filed

in the State Court and is found on pp. 2, 3 and 4 of the record.

It alleges,

1. That defendant below, plaintiff in error, is a Rhode Island corporation. and on June 11, 1880, was engaged in running two steamers between New York City and Stonington, Connecticut, by way of Long Island Sound; the steamers being named respectively, Narragansett and Stonington.

2. That on June 11, at New York, defendant below received the intestate of plaintiff below on the Narragansett for the purpose of conveying him as a passenger for compensation from New York to Stonington.

3. That the Narragansett, with the intestate on board, proceeded from New York towards Stonington, and met the Stonington going the other way, and that said steamers were so negligently managed that they collided and said intestate drowned.

4. That plaintiff below cannot tell the place of collision, whether it was in the State of New York or in the State of Connecticut, and then sets out certain statutes of Connecticut which it is claimed authorize the maintenance of this action.

The answer of the defendant below plaintiff in error was filed after removal in the Court below and is on pp. 10 to 13, with Exhibit attached pp. 13 to 26.

It alleges:

1 It admits that defendant below is a Rhode Island corporation running the steamers as charged.

2 It denies the allegations of the complaint as to receiving the intestate on board and as to his being drowned and as to negligence.

3 It alleges proceedings in surrender of the steamer Narragansett and claims them to be a bar.

The case was tried before Judge Coxe and a jury on 17th, April, 1885.

The plaintiff below called Mr. Young, Captain of the Narragansett. He proved a collision and that because thereof the Narragansett took fire, burned and sank. That she had about three hundred passengers on board.

No passengers were thrown into the water and none were burned.

There is no evidence that any passenger lost his life or was injured.

Weather was foggy, could see the length of the boat. They were going about eleven knots. Did not see the Stonington in time to avoid collision, pp. 28, 29.

The plaintiff below then called Mr. Sheffield, pilot of the Stonington, who testified p. 29. "It was a dense fog" first sighted Narragansett about 11.35, and our speed was then about eleven knots. The Narragansett was then about 150 feet off going across the bow of our boat. Immediately signaled to stop and back strong and it was done. They were in motion some when the collision occurred. It was not possible to stop soon enough to prevent collision,

On cross examination this witness shows that the Stonington had been blowing fog whistles since leaving Stonington and had heard whistles from the Narragansett about a point and a half on the port bow some three to five minutes before, and had put her helm hard-a-port and had swung at

least five points to starboard before the collision. That had the Stonington been going at half the speed she was, she could not have avoided the collision, as the Narragansett was going—but that if the Narragansett had ported her helm as she should have done, no collision could have occurred, pp. 30, 31.

The witness also testified as to the method of navigating the sound by steamers. They run from light to light, or point to point, carefully taking courses and time and noting effect of differing tides and weather and speed of boat by revolutions of wheel. The same plan is adopted in a fog and if the speed is greatly altered, they cannot tell where they are and the risk of navigation is greatly increased, pp. 31, 32, 33.

Plaintiff below then called Mr. Smith, who was engineer of the Stonington.

He testified to getting the usual signals to slow, stop and back and executing them.

When backing he received a signal to stop backing and go ahead again and was in the act of answering it when the collision occurred, p. 34.

Plaintiff below then called Mr. Fisher, who testified to having gone to Stonington and found the body of the intestate and brought it to Jersey City for burial, p. 34.

The plaintiff then rested.

Defendant below then called Mr. Lamphear, an expert in Sound navigation, and proved that the rate of speed of the Stonington was the safest she could adopt, pp. 34, 35, 36, 37.

The opinion of the witness as to what speed was safest was excluded and plaintiff in error excepted, p. 35.

Defendant below, then called Mr. Phillips, who testified

that he was bow watchman on the Stonington and heard the whistles of the Narragansett a point and a half or two points on their own port bow.

Plaintiff and defendant below then rested.

Thereupon defendant below asked the Court to direct a verdict for the defendant, for the reason that there was no evidence that the intestate went on or was on the Narragansett or as to how or why he died. The Court so held but allowed plaintiff below to offer further proofs, and she thereupon was herself sworn and testified that, on June 11, she crossed to New York on the ferryboat and left her son Charles, with his father, the intestate at the New York end of the ferry bridge. She did not go outside of the ferry. pp. 38 & 39.

Plaintiff below then called Charles C. Clare, who testified that on that afternoon he went with his father on board the Narragansett at New York, and was on her at the time of the collision. That his father was with him shortly before the collision, and that he did not see him after the collision, p. 39. Plaintiff below then again rested.

Defendant below then again asked the Court to direct a verdict on the ground that there was no evidence that the intestate lost his life by reason of the collision or by the negligence of the defendant. The request was refused and defendant excepted, p. 39.

Defendant below then asked to go to the Jury on the questions.

1. Whether plaintiff's intestate had lost his life by reason of the collision of the steamboats Narragansett and Stonington.

2. Whether defendant below or its servants has been guilty of any negligence in the navigation of the Stonington contributing to the collision.

The Court denied each request and defendant below excepted to each denial, p. 39.

On motion of the plaintiff below the Court then directed a verdict for the plaintiff below for five thousand dollars. Defendant below excepted, p. 40.

The New York Code of Civil Procedure gives an action to the administrator of a decedent in a case where the decedent, had he lived, would have had a right of action §1902 and by §1904 provides :

"The damages awarded to the plaintiff may be such a sum not exceeding five thousand dollars as the jury, * * * * the Court, or the Referee deems to be a fair and just compensation for the pecuniary injuries resulting from the decedent's death, to the person or persons for whose benefit the action is brought. When final judgment for the plaintiff is rendered, the clerk must add to the sum so awarded, interest thereupon from the decedent's death and include it in the judgment."

Pursuant to this statute the Clerk of the Court below computed the interest on the verdict and added it to the verdict and included it in the judgment Record p. 27. The interest thus "accrued before judgment and not after."

"The matter in dispute exclusive of costs" thus "exceeds the sum or value of five thousand dollars" and this Court has jurisdiction of the writ of error.

New York Elevated R. R. Co. vs Fifth Nat. Bank, 118 U. S., p. 608.

ASSIGNMENTS OF ERROR.

1 The Court erred in striking out part of the answer of

the witness Lamphear being the words "and we think it more it safe to do it," p. 35.

2 The Court erred in denying the motion of defendant below that the Court should direct a verdict for the defendant below, p. 39.

3 The Court erred in denying the request of the defendant below to go the jury on the question "whether the plaintiff's intestate had lost his life by reason of the collision of the steamboats Narragansett and Stonington," p. 49,

4 The Court erred in denying the request of the defendant below to go to the jury on the question "whether the defendant or its servant had been guilty of any negligence in the navigation of the Stonington contributing to the collision, p. 39.

ARGUMENT.

First. The Court erred in directing a verdict for plaintiff below, and in declining to direct a verdict for defendant below, on the ground that there was no evidence that the intestate's life was lost by the collision of the steamers or at least in refusing to allow defendant below to go to the jury on that question.

The *only* evidence of the death of the intestate is that of Fisher, p. 34, who says that he saw the body in *Stonington* on the Sunday following the 11th of June, 1880. How long Sunday was after the 11th, does not appear in the record. The almanac shows it to have been two days or the 13th.

As to how or when the intestate came in Stonington and whether alive or dead or as to how he died or what caused his death there is not one particle of evidence.

Nor is there any evidence as to how far the place of collision is from Stonington except as it may be inferred from the testimony of pilot Sheffield of the Stonington to be about twenty-five miles. Mr. Sheffield says that his steamer left Stonington about 9.30 P. M., and that the collision occurred about 11.30 P. M., and that the speed of his steamer was about 11 knots, 12½ miles, an hour, pp. 29 & 30.

The son of intestate says he saw his father on the Narragansett shortly before the collision, and did not see him after.

The son does not say that his father was drowned or that any life was lost, or that there was any risk, or that he himself was in any danger, nor is there a word of evidence from any one that any life was lost or that there was any danger of loss of life on the steamer Narragansett.

Does the naked fact that the intestate was two days afterwards found dead in Stonington so *conclusively* prove that the intestate lost his life by the collision as to warrant *a direction* of a verdict for plaintiff below and a refusal of the request of defendant below that the question be submitted to the jury?

If there be here *any* proof that intestate's death was caused by the collision it is one of *inference* from the facts that he was on board the Narragansett when she collided with the Stonington and that two days after he was dead.

Whether those facts warrant that inference is we submit a question for the jury. The facts are surely consistent with death otherwise caused. The inference then is not *a necessary* one and should have been left to the jury to draw or to decline to draw.

In McGrath vs. R. R. Co., 32 Barb., 147, the Court said "The inference as well as the fact is for the jury."

In Ernst vs R. R. Co., 35 New York Reps., 26 the Court

said. "It is the appropriate province of the jury to deduce inferences of fact and to weigh doubtful and conflicting evidence."

In Colegrove vs R. R. Co., 20 New York, 493 the Court said: "The party demurring" (to evidence) "is bound to admit as true not only the facts proved by the evidence, but also the facts which the evidence may legally conduce to prove (2 Dunlap's Pr. 648), and this is precisely what must be admitted on a motion for a non-suit or for a peremptory direction that a verdict be rendered. The party non-suited or against whom a verdict is ordered is upon appeal entitled to have every doubtful fact found in his favor."

In Jackson vs. Metropolitan Ry. Co., L. R. 3d Appeal, Cases 193, Lord Blackburn said, "It is for the jury to say whether and how far the evidence is to be believed. And if the facts, as to which evidence is given are such that from them a farther inference of fact may legitimately be drawn, *it is for the jury to say whether that inference* is to be drawn or not."

In Hart vs. Company, 80 New York, 622, the head note reads, "Where from the circumstances shown inferences are to be drawn which are not certain and incontrovertible, and as to which persons might differ it is for the jury to decide."

In Justice vs. Lang, 52 New York, 323, the head note reads, "The right to determine as to the existence of one fact from another which is established is exclusively within the province of the jury."

In Powell vs. Powell, 71 N. Y.. 71, the head note says, "It is the province of a jury not only to pass upon conflicting evidence, but, where different inferences may be drawn from evidence, or from the conduct of parties, to draw the inferences."

In addition to the fact that the inferences to be drawn from the assumed facts were for the jury, the fact of being

on board was proved only by the testimony of the witness Clare, a son of the deceased, and under the statute under which the action was brought directly interested in the recovery.

The *unimpeached* testimony of an interested witness presents a question for the jury, " and the Court is not warranted in directing a verdict upon his testimony alone."

Gildersleeve vs. Landon, 73 N. Y., 609.

In Kavanagh vs. Wilson, 70 New York, 177, the only witness as to the contract was a *son* of plaintiff.

The trial Court refused to submit the question of contract to the jury and directed a verdict for plaintiff. Held error.

Counsel for defendant in error may claim as he did below that the answer of defendant below, admits the death of the intestate from the collision and that he was a passenger on board, p. 34.

The answer does not admit it, on the contrary, expressly denies it, record pages 10 and 11.

The Court below so held. On the motion of defendant below, for a directed verdict, because there was no proof of those facts the Court held, that the plaintiff below must prove them, Record p. 38. Plaintiff then gave certain proofs, and the Court held the *proofs* not only sufficient but conclusive, Record p. 39.

Had the Court held the answer insufficient as a denial, we could have applied to amend. The only questions now before this Court, are on our writ of error and our exceptions, whether the trial as actually conducted shows error, as against us; not whether rulings which were in our favor would have been error, had the result been in our favor and the other side taken exceptions and a writ of error.

We submit that the evidence in this case, is insufficient to

submit to the jury the question whether the intestate came to his death, by reason of the collision, and that the Court below should have directed a verdict for the defendant below; but even if it is sufficient to submit to the jury, it is wholly insufficient to warrant a direction of a verdict for the plaintiff below.

Second. The Court erred in refusing to submit to the jury the question whether the plaintiff in error, had been guilty of any negligence in the navigation of the Stonington contributing to the collision.

This request could have been refused only on one of two grounds.

1. That defendant below would be liable for negligence of the Narragansett or

2. That the evidence so conclusively proved negligence in the navigation of the Stonington as to warrant a direction of a verdict on that ground.

It could not have been the first because the proceedings on surrender of the Narragansett were proved, Record p. 34. f. 101.

If it were on that ground it was error.

If on the other ground we also submit that it was error.

Doubtless many cases can be cited holding that even a less speed than that at which the Stonington was running, made a case of negligent navigation.

They will however all be found to be admiralty cases where the Court is judge not only of the law, but of the facts.

The question raised by this record in a common law Court

could not have been raised in those cases which were in admiralty.

The difference between the two Courts and that the decisions of Admiralty Courts, form no precedents for common law Courts, is well illustrated in the case of Seward v. Jackson, 8 Cowen, 442. The Courts below in ejectment had held that a certain conveyance was fraudulent in law though the jury found that in fact there was no fraud.

To sustain the judgment below, certain equity decisions were cited, said Allen, Senator, p. 442.

"It was said on the argument that the doctrine of legal fraud had its origin at that period when the Courts were inclined to take the power from the jury. But another suggestion, that it is the offspring of the Court of Chancery, I believe the true one. *There* the Chancellor determines both the law and the fact; and the purpose and intent of the conveyance are before him as before a jury in the Courts of law. When a conveyance had once been adjudged fraudulent upon a given state of facts, *those facts*, as well as the law, *became a precedent for a succeeding chancellor* and bound the judgment by the force of analogy upon the question of intent and purpose as well as law.

And when an analogous state of facts in the Courts of law, has been referred to a jury, and the jury has said there was no fraud, the *sayings of equity judges* have been resorted to for legal presumptions, independent of intentional fraud; and hence the modern distinction between fraud in law and fraud in fact."

The same view is expressed by Chancellor Jones on page 422.

And the Court repudiated the idea that a Court of law was bound by the decisions of the Courts of Equity, which had jurisdiction to adjudge fact as well as law.

Now, in the case of The Pennsylvania, 19 Wallace 125, p. 133, this Court said

"Our rules of navigation * * * require every steamship when in a fog to go at moderate speed. What is such speed may not be precisely definable.

It must depend upon the circumstances of each case. That may be moderate and reasonable in some circumstances, which would be quite immoderate in others."

The same doctrine is stated in many other cases.

Now, in the case at bar, there were many special considerations forbidding a very low rate of speed.

1st. Quick handling of the vessel by steering is much easier with considerable than with slow speed.

At a very low rate of speed a large steamer is almost helpless and cannot be quickly steered so as to avoid a sudden danger.

2nd. A very considerable degree of speed is necessary in order to know where they are. The sailing is by direction and speed, and at low speed, wind and cross tides combine to prevent that accurate knowledge of position which is essential to the safe navigation of the Sound.

3rd. Even coming to anchor in a fog is about the most dangerous thing that can be done. The boat is then helpless. She has lost the great advantage of her steam and must rely wholly on the capacity of others to avoid her.

4th. When a large steamer is navigating in a fog, her first duty is self preservation. She carries many lives and enormous values.

She is justified in doing that which is eminently self preservative, even if it does, though in this case it does not, somewhat increase the risk to the smaller vessels she may meet.

5th. In the case at bar the Stonington heard the Narragansett whistles on the Stonington's port bow and ported her helm. With the speed she was going her steering was good and her bow rapidly swung to starboard.

It was the duty of the Narragansett likewise to port her helm and had she done so there could have been no collision.

She did not port, but starboarded and thus ran right across the bows of the Stonington.

There was the fault and with that fault no rate of speed however slow, would have prevented collision.

These points and questions we submit, were points and questions for the jury and it was for the jury and not for the Court below to pass on them and say whether under all the circumstances the Stonington was going at "moderate speed" within the meaning of the Act.

Third. The Court erred in refusing to direct a verdict for defendant on the ground that there was no evidence that intestate was a *passenger* on the Narragansett (p. 39, fol. 109).

There was not only not sufficient evidence to take the case from the jury on the question whether the intestate was a *passenger* on the Narragansett, but there was *no* evidence thereof.

Unless the intestate was a passenger, the defendant be-

low was not liable, unless for wilful injury—it was not liable for negligence.

Railway Accident Law (Patterson) p. 204.

There is here not a word of evidence to show that intestate was a passenger.

Fourth. The judgment should be reversed.

WHEELER H. PECKHAM,
Of Counsel for Plff. in error.